

### Remarks

The Applicant understands Amendment A submitted on January 18, 2005, has not been entered for the reasons set forth in the Notice of Non-Compliant Amendment dated February 2, 2005. This Notice set a 1 month/30 day period of response. The Applicant respectfully submits the claims originally presented in this application were directed to a cafeteria tray accumulator and that the combination claims presented on January 18, 2005, were also drawn to a cafeteria tray accumulator. The Applicant presented the claims in combination form for clarity. The Applicant understands the Examiner's position is that such combination claims must be withdrawn from consideration as being directed to a non-elected invention which would require a further search. The Applicant has revised the amendment retaining the first set of claims in the original cafeteria tray accumulator form while also requesting the Examiner to consider the other two sets of claims drawn to the combination and the method of retrofitting. Both of these claim sets are drawn to the cafeteria tray accumulator system defined in the specification. All three claim sets are distinct from conveyors such as that disclosed in Krenzke discussed below.

The Applicant thus respectfully traverses the Examiner's stated reasons for requiring division of the claims set for in the Notice of Non-compliant amendment.

The Examiner rejected the elected claims as being anticipated by Krenzke (US Patent 1,787,731). The Examiner also rejected claim 19 as being obvious under section 103(a) over Krenzke in combination with Elgharini (US Patent 6,152,154). The Applicant respectfully traverses the rejections and has amended the pending claims to clearly distinguish the cafeteria tray accumulator from unrelated prior art conveyors such as that disclosed in Krenzke. The present invention is designed to reduce the problem of cafeteria tray conveyor overloads such as those that occur when a cafeteria dish room is understaffed. The problem of overloaded cafeteria tray conveyors has existing since such conveyors were first installed to transport dish-laden trays from a dining area to a dish room in a building. The problem has grown considerably as the cost of dish

room labor has increased. The claimed invention provides a novel and unobvious solution to the problem while simultaneously providing an economically solution that may be retrofit into the existing space of old cafeteria tray conveyors.

"To anticipate a claim, the reference must teach every element of the claim." MPEP 2131. The Applicant respectfully submits the independent claims filed with the application recited a cafeteria tray accumulator that is not disclosed or taught by Krenzke. In order to further distinguish the invention, the Applicant has amended the claims in this amendment. The Applicant has amended the pending claims to positively recite the building structure and environment in addition to the tray accumulator. Specifically, the independent claims now recite that the vertically-offset transverse legs of the drive track are disposed in the space between the walls that define the tray loading and tray unloading windows of the accumulator system. The claims have also been amended to recite that these elements are in combination. Krenzke does not disclose or teach a cafeteria tray accumulator as now recited in the claims. Krenzke thus does not anticipate the claims and the Applicant respectfully requests the examiner to withdraw the rejection.

In addition, the Applicant submits the pending claims are not obvious in view of the cited references, whether taken alone or in combination. The Applicant initially contends that art such as Krenzke is nonanalogous and thus should not be considered as part of the section 103 analysis. MPEP 2141.01(a). The Examiner has not shown why a person of ordinary skill in the art seeking to solve a problem of improving a cafeteria tray accumulator would reasonably be expected or motivated to look in the industrial oven art. "The combination of elements from non-analogous sources, in a manner that reconstructs the Applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination." *In re Oetiker*, 24 USPQ 2d 1443 (Fed. Cir. 1992). The Applicant submits the currently-amended claims eliminate

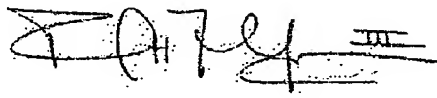
art such as Krenzke from consideration. The rejection based on the combination of Krenzke with Elgharini is thus respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestions or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. M.P.E.P. § 2142. The Applicant submits that the suggestions required to establish a *prima facie* case of obviousness is not found in the prior art references. Without such a suggestion, a *prima facie* case of obviousness is not established. The Applicant thus submits that the unique cafeteria tray accumulator system now recited in the claims is patentable over the art.

In addition, the Applicant has submitted new claims 21-22 reciting the steps of retrofitting an existing cafeteria tray accumulator system with the system of the present invention. The Applicant respectfully requests these claims to be examined.

Although the dependent claims include independently patentable limitations, the Applicant submits the independent claims are patentable over the art and has presented arguments in favor of the independent patentability of the dependent claims in this response. In view of the foregoing, the Applicant respectfully requests reconsideration of the claims and most earnestly solicits the issuance of a formal Notice of Allowance for the claims.

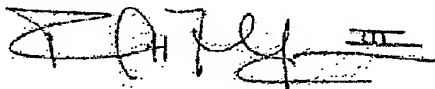
Please call the undersigned attorney if any issues remain after this amendment.



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I hereby certify that this correspondence (Amendment A in application serial no. 10/662,562 filed 9-12-2003) is being deposited with the United States Postal Service as first class mail (with sufficient postage) in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, OR is being transmitted by facsimile to 703-872-9306 on March 4, 2005.



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